IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 18.04.2005

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.K.KRISHNAN

H.C.P. No.1308 of 2004

V.Srinivasan @ Sami @ Elumalai ... Petitioner

vs.

1. The State of Tamilnadu rep.
by the Secretary to the Government,
Public (SC) Dept.,
Fort St. George,
Chennai 600 009.

2. The Union of India,
rep. by the Secretary to the Government,
Ministry of Finance,
Department Of Revenue,
New Delhi.

3. The Superintendent of
Central Prison,
Central Prison, Salem. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus to call for the records relating to the detention order in G.O.No.S.R.1/528-10/2004 dated 24.05.2004 passed by the first respondent herein and quash the same and direct the respondent to produce the body of the person of the detenu namely V.Srinivasan @ Sami @ Elumalai son of Venkataswami before this Hon'ble Court, now detained under Sec.3(1)(ii) of the COFEPOSA Act in the Central Prison, Salem and set him at liberty.

For Petitioner : Mr.S.Palanikumar
For R-1 & R-3 : Mr.A.Kandasamy
Additional Public Prosecutor.

For R-2 : Mrs.Vanathi Srinivasan,
Addl. Central Govt. Standing
Counsel

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The detenu by name V.Srinivasan @ Sami @ Elumalai, who was detained by the impugned detention order, dated 24.5.2004, passed under Section 3(1)(ii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974), challenges the same in this Habeas Corpus Petition.

2. Heard learned Counsel for petitioner, learned Additional Public Prosecutor for R-1 and R-3 and learned Additional Central Government Standing Counsel for R-2.

3. Though several contentions have been raised questioning the impugned order of detention, learned counsel appearing for the Petitioner at the foremost contended that the detention order is liable to be quashed on the ground of non-application of mind on the part of the Detaining Authority.

4. While elaborating the said contention, learned counsel has brought to our notice that though the Detaining Authority was aware of the fact that the detenu has filed a bail petition on 17.05.2004 before the Chief Judicial Magistrate, Namakkal, in paragraph No.5 of the grounds of detention, the Detaining Authority has proceeded, ignoring the fact of pendency of the bail petition dated 17.5.2004, and observed that the detenu is entitled to file a bail petition and that there is likelihood of he being released on bail or statutory bail. As rightly pointed out, a perusal of the averments made in Paragraph No.1(xxxiv) of the grounds of detention clearly shows the pendency of bail petition dated 17.5.2004 before the Additional Chief Metropolitan Magistrate, Namakkal. It is not in dispute that the detention order was passed on 24.05.2004. However, in paragraph No.5 of the grounds of detention, the Detaining Authority has stated that since the detenu was a remand prisoner and his judicial remand is only for the period specified in law, he is entitled to file a bail petition and there is likelihood of he being released on bail or statutory bail. As rightly pointed out, the said conclusion is contrary to the statement made in the earlier paragraph, viz., paragraph No.1 (xxxiv) of the grounds of detention, and this material aspect of the matter has not been taken note of by the Detaining Authority while arriving at the subjective satisfaction.

5. In this regard, learned counsel for the petitioner has brought to our notice a decision rendered by us in HCP No.1053 of 2004, dated 14.3.2005. In that case, while considering similar factual details, after holding that the detention order is

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vitiated inasmuch as the Detaining Authority has not considered the relevant fact, namely, pendency of bail petition on the date on which the detention order was passed, we quashed the order of detention on the ground of non-application of mind. The said decision is applicable to the case on hand.

6. Accordingly, the Habeas Corpus Petition is allowed, quashing the impugned order of detention dated 24.5.2004. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to the Government,
Public (S.C.) Dept., Fort St. George,
Chennai 600 009.

2. The Secretary to the Government,
Union of India, Ministry of Finance,
Department of Revenue, New Delhi.

3. The Superintendent of
Central Prison, Central Prison, Salem.
(in duplicate for communication to detenu)

4. The Public Prosecutor
High Court, Madras

5. The Joint Secretary to Govt.,
Public (Law and Order) Dpt.,
Fort st George, Madras.

6. The Sub Asst.Registrar
COFEPOSA ACT., High Court Madras.

+ 1 cc to Mr.S.Palanikumar, Advocate SR 18840
+ 1 cc to Ms.Vanathi Srinivasan, ACGSC SR 18454.

SMK(CO)
SR/21.4.2005 HCP. No.1308 of 2004.

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